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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.			ARNOLD, ERNST V	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/606,786	DECOSTER ET AL.
	Examiner ERNST V. ARNOLD	Art Unit 1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 June 2008.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-48 is/are pending in the application.  
 4a) Of the above claim(s) 44-46 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-43, 47 and 48 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1668)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

Claims 44-46 have been withdrawn. Claims 47 and 48 are new. Claims 1-43, 47 and 48 are under examination. Applicant's introduction of new subject matter which was not previously presented has necessitated a new ground of rejection. Accordingly, this action is FINAL.

**Withdrawn rejections:**

Applicant's amendments and arguments filed 6/3/08 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below is herein withdrawn.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 10-14, 17-20, 28-31 and 34-43 remain/are rejected under 35 U.S.C. 102(b) as being anticipated by Janchitraponvej et al. (US 5,556,615).

Janchitraponvej et al. disclose a composition comprising a cationic silicone and a liquid fatty alcohol that is transparent and reads on instant claim 1 reproduced below for applicant's benefit (Examiner added emphasis).

EXAMPLE 5		15
Ingredient	weight percent	
Silicone Compound <sup>1)</sup>	1.00	
Amidobamine <sup>2)</sup>	1.00	
Lactic Acid <sup>3)</sup>	0.44	20
Hexylene Glycol	10.00	
Propylene Glycol	4.00	
Cyclomethicone <sup>4)</sup>	1.00	
Quaternary Ammonium Compound <sup>5)</sup>	1.50	
Protein-based Conditioner <sup>6)</sup>	0.80	
Coupling Surfactant <sup>7)</sup>	1.75	25
Nonionic Surfactant <sup>8)</sup>	0.80	
Thickener <sup>10)</sup>	1.15	
Fragrance	0.30	
Preservative <sup>11)</sup>	0.25	
Dye	q.s.	
Water	q.s. to 100%	30

<sup>1)</sup>Silicone SF1173, G.E. Silicones, Waterford, NY, added as a 100% active material;

<sup>2)</sup>ADODGEN 432ET, Sherr Chemical Co., Dublin, OH, added as a 75% by weight active material (diacyldimonium chloride);

<sup>3)</sup>MACKPRO WLW, The McInyre Group, University Park, IL, added as a 40% by weight active material (quaternized wheat protein); <sup>35</sup>

<sup>4)</sup>SURFADONE LF300, ISP Chemical Co., Wayne, NJ, added as a 100% active material (N-laurylpicolidone);

<sup>5)</sup>BRI 98, ICI America, Wilmington, DE, added as a 100% by weight active material (polyoxyethylene (20) oleyl ether);

<sup>6)</sup>ATRUSOL FINE, Hercules, Inc., Wilmington, DE (hydroxyethylcellulose); and

<sup>7)</sup>0.05% KATHON CG Rohm and Haas Co., Philadelphia, PA and 0.20% 40  
Glydant, Lonza, Inc., Fairlawn, NJ.

<sup>1)</sup>Percentages are active weight percent of each ingredient present in the composition;

<sup>2)</sup>SILQUAT Q-50, available from Siltech, Inc., Norcross, GA, added as a 70% active product in isopropyl alcohol;

<sup>3)</sup>EXAMINE L-13, lauromidopropyltrimethylamine, available from Inolex Corp., Philadelphia, PA, as a 100% active product; and

<sup>4)</sup>Added as an 88% aqueous solution to neutralize the amidobamine and adjust the pH.

Silquat Q-50 is a silicone polymer with a quaternary nitrogen and polyoxyethylene oleyl ether is an ethoxylated fatty alcohol (See column 10, line 1 through column 11, line 35; column 14, lines 58-64 and column 15, lines 15-40).

Janchitraponvej et al. disclose that compositions made with Abil quat 3272 (another name for quaternium 80) for silquat q-50 were also clear. (column 15, lines 45-47). Thus,

Janchitraponvej et al. have reduced to practice a clear composition of Quaternium 80 and a liquid fatty alcohol anticipating instant claims 1-7, 10 and 11. The additional cationic surfactant above is the dicetyltrimonium chloride and reads on instant claims 12-14 and 17. The quaternized wheat protein reads on an additional cationic polymer and anticipates instant claims 18-20 and 28. The composition above comprises 1.15% thickener which is hydroxyethylcellulose and reads on instant claims 29-31, 34 and 35. The composition above has an additional silicone, cyclomethicone which can serve as a conditioner, as well as additional surfactant (N-laurylpyrrolidone) and additional protein based conditioners thus anticipating instant claims 36-38. The presence of water, fragrance and glycol in the hair conditioning composition anticipate instant claims 39-43. It is the Examiner's position that the intended use as a rinse out shampoo is inherent in the composition of Janchitraponvej et al. With respect to the art rejection above, it is noted that the reference does not teach that the composition can be used in the manner instantly claimed, shampoo etc..., however, the intended use of the claimed composition does not patentably distinguish the composition, *per se*, since such undisclosed use is inherent in the reference composition. In order to be limiting, the intended use must create a structural difference between the claimed composition and the prior art composition. In the instant case, the intended use does not create a structural difference, thus the intended use is not limiting.

**Response to arguments:**

Applicant asserts that Janchitraponvej et al. teaches a composition of quaternium 80 (silicone with quaternary ammonium compounds) and BRIJ 98 which is polyoxyethylene (20) oleyl ether which is an ethoxylated fatty alcohol and not a liquid fatty alcohol. Applicant provided a data sheet showing that this fatty alcohol has a melting point of 30 C. Applicant

asserts that BRIJ 98 is a solid and not liquid fatty alcohol. The Examiner cannot agree with this reasoning and has two rebuttal points. First, the solid/liquid transition of the fatty alcohol is temperature dependent and the instant claims do not recite a temperature; and 2) if the Examiner were to agree with Applicant then there would be a potential enablement problem because Applicant clearly teaches using solid fatty alcohols in the composition. Note that Applicant discloses lauryl alcohol mp=24 C and myristyl alcohol mp= 38 C for use in the invention (claim 9) both of which would be solids at 20 C. In addition, it is the Examiner's position that once the prior art composition of Janchitraponvej et al. comes into contact with body heat (37 C) it will melt.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-43, 47 and 48 remain/are rejected under 35 U.S.C. 103(a) as being unpatentable over Janchiraponvej et al. (US 5,556,615) in view of Jacquet et al. (US 4,390,522), Dupuis (US 6,214,326) and Vatter et al. (US 6,224,888) and Monick (J. Am. Oil Chemists Soc 1979, 56, 853A-860A).

Applicant claims a transparent composition comprising in a cosmetically acceptable medium at least one silicone with quaternary ammonium groups and at least one liquid fatty alcohol.

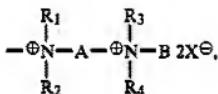
#### **Determination of the scope and content of the prior art**

##### **(MPEP 2141.01)**

Janchiraponvej et al. is discussed above and that discussion is hereby incorporated by reference. Janchiraponvej et al. teach hair conditioning compositions for treating hair comprising a 0.1% to 5% silicone compound such a Quaternium 80, and provide an example with a silicone compound, quaternary ammonium compound (a cationic surfactant), nonionic surfactant, alkylene glycols, 1.15% thickener (hydroxyethylcellulose), cyclomethicone (additional conditioner), protein-based conditioner, coupling surfactant, fragrance and water as shown above (Abstract; column 15, example 5 and claims 1, 8 and 9). Janchiraponvej et al. teach quaternary ammonium compounds for inclusion in the composition (Column 12, lines 25-59) and nonionic surfactants such as polyoxyethylene (20) oleyl ether and N-alkylated-2-pyrrolidones (Column 13, lines 46-67). **Please note for the record that polyoxyethylene (20) oleyl ether is of the formula C<sub>18</sub>H<sub>35</sub>(OCH<sub>2</sub>CH<sub>2</sub>)<sub>6</sub>OH and reads on liquid fatty alcohols.**

Janchitraponvej et al. teach that an oil-soluble water dispersible quaternary ammonium compound either alone or in combination with a water-soluble quaternary ammonium compound can be used in the composition (Column 12, lines 40-44). Janchitraponvej et al. teach the addition of an optional nonionic thickener such as hydroxypropylcellulose, guar gum, and gum Arabic, for example, at 0% to about 3% by weight (Column 14, lines 1-10). Janchitraponvej et al. teach that the hair is rinsed with water after contacting with the conditioning composition (Claims 14 and 15).

**Jacquet et al. teach the addition of 0-25 weight percent of a fatty alcohol such as oleyl, lauryl, myristyl, cetyl, stearyl, and isostearyl alcohols** to diquaternary ammonium cationic polymer cosmetic compositions for application to the hair (Claims 1, 11 and 12). Shown below is the diquaternary ammonium cationic polymer, which can be present from 0.1% to 5% in shampoos (Column 8, lines 45-48).



Jacquet et al. teach emulsifiers such as oleyl alcohol polyoxyethylenated with 10 to 30 moles of ethylene oxide, for example (Column 7, lines 15-42). Jacquet et al. teach fatty alcohols of 9-15 carbons polyoxyethylenated with 5 to 10 moles of ethylene oxide (column 7, lines 29-31). Jacquet et al. teach nonionic detergents such as ethers of polyethoxylated fatty alcohols (Column 7, lines 65-67). Jacquet et al. teach the further addition of cosmetic resins such as polyvinylpyrrolidone and copolymers of polyvinylpyrrolidone (Column 8, lines 54-61). Jacquet et al. teach cationic detergents such as long-chain quaternary ammoniums, alkylpyridinium salts,

polyether fatty amines, or imidazoline derivatives (Column 7, lines 62-64). Jacquet et al. teach lauryltrimethylammonium chloride as a cationic ammonium compound which renders obvious other alkyltrimethylammonium salts present in the composition from about 5% to about 10% by weight of the composition in total (Column 12, lines 23-25 and 49). Jacquet et al. teach the addition of perfumes, dyes, thickening agents, foam stabilizing agents and softening agents (Column 8, lines 40-44).

Dupuis teaches cosmetic compositions for treating keratinous material containing cationic polymers and acrylic terpolymers (Abstract). Dupuis teaches that the thickening and/or gelling polymers combined with cationic polymers produces cosmetic formulations which are not pasty or greasy and which give hair good properties of softness, feel and easy disentangling (Column 1, lines 36-44). The thickening and/or gelling polymers are terpolymers with a) methacrylic acid or acrylic acid; b) methacrylates, acrylates such as methyl, ethyl and butyl acrylate, and nonionic surfactants, and c) nonionic urethane monomer (Column 1, line 59 bridging Column 2, lines 63). Dupuis teaches cationic polymers of silicone, polyamines, polyaminoamides and quaternary polyammonium types as known products (Column 3, lines 52-55). Dupuis teaches quaternized vinyl pyrrolidone dialkylaminoalkyl acrylate or methacrylate copolymers, cellulose derivatives containing quaternary ammonium groups, dimethyldiallyl ammonium salts of hydroxypropylcellulose, cationic polysaccharides and in particular guar gums, polymers consisting of piperazinyl units, water soluble polyaminoamides, methyldiallylamine or dimethyldiallyl-ammonium cyclopolymers, polyquaternary ammonium polymers of formula VIII found in column 10, lines 25-30, homopolymers or copolymers derived from acrylic or methacrylic acid, quaternary vinylpyrrolidone and vinyl-imidazole

polymers, polyamines, methacryloyloxyethyltrimethylammonium chloride crosslinked polymers, condensates of polyamines and epichlorohydrin, and chitin derivatives, for example (Column 3, line 56 through column 12, line 20 and claims 1 and 11). Dupuis teaches that when the composition is a leave-in type it comprises one or more of quaternized or non-quaternized vinylpyrrolidone/dialkylaminoalkyl acrylate or methacrylate copolymers or quaternary vinylpyrrolidone or vinylimidazole polymers (Claim 12). Dupuis teaches the composition as a rinse-out or leave in hair product (Claim 18).

Vatter et al. teach conventional thickening agents including synthetic polymeric materials such as polyvinylpyrrolidone for use in cosmetic compositions (Column 9, line 60 bridging column 10, line 19).

Monick is relied upon for teaching that fatty alcohols are clear liquids (page 856A, right column).

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

1. Janchitraponvej et al. do not expressly teach a composition with the instantly claimed fatty alcohols in claims 8, 9, 47 and 48. This deficiency in Janchitraponvej et al. is cured by the teachings of Jacquet et al.

2. Janchitraponvej et al. do not expressly teach a composition with the cationic polymers of instant claims 15, 16 and 21-27. This deficiency in Janchitraponvej et al. is cured by the teachings of Dupuis and Jacquet et al.

3. Janchitraponvej et al. do not expressly teach a composition wherein the thickening agent is selected from a member of instant claim 32 or a crosslinked homopolymer of vinylpyrrolidone. This deficiency in Janchitraponvej et al. is cured by the teachings of Vatter et al., Dupuis and Jacquet et al.

### **Finding of prima facie obviousness**

#### **Rational and Motivation (MPEP 2142-2143)**

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add a fatty alcohol, as suggested by Jacquet et al., to the composition of Janchitraponvej et al. and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because: 1) Janchitraponvej et al. suggest adding polyoxyethylene (20) oleyl ether which is a fatty alcohol; and 2) Jacquet et al. teach the addition of adjuvants, such as fatty alcohols and oxyethenated or polyglycerolated fatty alcohols, in cosmetic compositions for the hair (Column 6, lines 19-21 and column 7, lines 15-16 and 24-42). The fatty alcohols are established by Jacquet et al. to be common additives to these types of compositions and “It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.” In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). Furthermore, as discussed above, Monick teaches that fatty alcohols are generally clear liquids.

2. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add the quaternary amine cationic polymers of Jacquet et al. or Dupuis to the composition of Janchitraponvej et al. and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because: "It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). It is the Examiner's position that the polymer renders obvious the quaternary monomer.

3. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add the thickening agents taught by Dupuis, Jacquet et al. and suggested by Vatter et al. in the composition of Janchitraponvej et al. and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Dupuis teaches that the thickening and/or gelling polymers combined with cationic polymers produces cosmetic formulations which are not pasty or greasy and which give hair good properties of softness, feel and easy disentangling (Column 1, lines 36-44). Vatter et al. teach that polyvinylpyrrolidone is a conventional thickening agent and it is the Examiner's position that one of ordinary skill in the art would immediately recognize polyvinylpyrrolidone as a thickening agent and one of ordinary skill in the art has the ability to crosslink a homopolymer of polyvinylpyrrolidone.

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976).

In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**Response to arguments:**

Applicant asserts that Janchitraponvej does not teach or suggest adding a liquid fatty alcohol to the compositions. The Examiner cannot agree because BRIJ 98 is liquid at 30 C and Applicant teaches using fatty alcohols that melt at 38 C (see discussion above). Applicant asserts that there is no motivation to add liquid fatty alcohols to the clear compositions of Janchitraponvej et al. because conventional compositions containing liquid fatty alcohols were not transparent and such a combination would have been expected to result in a non-transparent composition contrary to the purpose of Janchitraponvej et al. Respectfully, the Examiner cannot agree for the following reasons. Janchitraponvej et al. disclose adding nonionic fatty alcohols to the composition as described above. Obviously Janchitraponvej et al. understood that the fatty

alcohols are clear/transparent and would result in clear compositions. This position is supported by the teachings of Monick on page 856A reproduced below for Applicant's benefit:

### **PHYSICAL PROPERTIES**

The common higher alcohols are colorless liquids or solids, depending on the number of carbon atoms.

It is reasonable to suggest that one of ordinary skill in the art would know which are clear/transparent/colorless and could be added to the clear compositions of Janchitraponvej et al. without destroying the spirit of the Janchitraponvej et al. invention.

Again, the results in the Declaration were only differences in degree and not in kind. It remains expected to produce a shampoo rinse out composition. "Expected beneficial results are evidence of obviousness of a claimed invention, just as unexpected results are evidence of unobviousness thereof." *In re Gershon*, 372 F.2d 535, 538, 152 USPQ 602, 604 (CCPA 1967). Applicant's arguments are not persuasive and the Examiner maintains the rejection.

Applicant asserts hindsight reconstruction. The Examiner cannot agree because the primary reference teaches that the compositions are clear and the secondary reference teaches that fatty alcohols are colorless. One would expect a clear/transparent solution.

### ***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F (6:15 am-3:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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